



**IN THE HIGH COURT OF SOUTH AFRICA
(EASTERN CAPE DIVISION, MTHATHA)**

CASE NO: 2072/2024

In the matter between:

UNATHI NOHOLOZA

Plaintiff

and

MINISTER OF POLICE

Defendant

JUDGMENT

RUSI J

[1] The plaintiff was arrested on 20 July 2021 without a warrant at his home in Tabase Mission, Mthatha, by the members of the defendant and subsequently detained at the Mthatha Central Police Station. He was arrested on suspicion of alleged unlawful possession of a firearm. His first appearance in the Mthatha Magistrates' Court was on 22 July 2021. After his first appearance in court, he was detained at the Mthatha Correctional Centre (the Wellington Prison) until he was released on bail on 27 July 2021.

[2] Aggrieved by the conduct of the police in arresting and detaining him as aforementioned, the plaintiff claimed the sum of R800 00.00 as and for damages resulting from the said arrest and detention. The matter served before me on 03 December 2025 as a default judgment application as envisaged in Uniform Rule 31(2)(b). It is opportune to set out the brief litigation history of the matter, which culminated in the matter being heard as an undefended action.

The litigation history

[3] The plaintiff instituted the action on 13 May 2024, and summons was served on the defendant by 23 May 2024. The defendant entered his appearance to defend which was followed by his plea dated 31 July 2024. This plea was later set aside by this Court on 12 November 2024 as an irregular step, and the defendant was afforded fifteen days within which to file his plea. At the end of this period, and on 26 February 2025, the plaintiff delivered a notice calling the defendant upon to plead within five days of service of the notice. This did not happen and the plaintiff brought an application for default judgment against the defendant, which was later withdrawn on the day of its hearing by agreement between the parties.

[4] In its order dated 30 July 2025 granting leave to withdraw the plaintiff's application for default judgment, the Court afforded the defendant twenty days within which to file a plea. The defendant was legally represented during the proceedings where this order was made. When the *dies* determined in the court order expired without the defendant filing its plea, the plaintiff delivered a notice to plead on 11 November 2025 in which the defendant was afforded five days to file its plea. The period afforded expired with no plea filed. Hence, the matter was enrolled before me on 03 December 2025 for the hearing of the application for default judgment.

[5] At the hearing of the matter, Mr *Msindo* invited the court to determine the entire claim, in other words, to hear both the merits and quantum of damages.

The pleadings

[6] In his particulars of claim, the plaintiff alleged that his arrest was unlawful in that he was arrested without a warrant and his arrest was not justified in law. He made reference to section 40(1)(a) and section 40(1)(b) of the Criminal Procedure Act 51 of 1977 (the CPA), which set out circumstance under which a person may be arrested without a warrant. In terms of section 40(1)(a) of the CPA, a peace officer may arrest a person without a warrant if that person commits an offence in her presence. In terms of section 40(1)(b), an arrest of a person without a warrant will be justified if the peace officer entertains a reasonable suspicion that the person concerned committed an offence listed in Schedule 1 of the same Act. The plaintiff alleged that none of these provisions justified his arrest.

[7] As regards his detention from 20 July 2021 until 27 July 2021, the plaintiff alleged that the police who arrested him failed to exercise their discretion whether or not to arrest him. Alternatively, they wrongly exercised their discretion and were actuated by malice in detaining him. They had no reason to believe that he would not attend court if warned to do so.

The trial proceedings

[8] In support of this claim at the hearing of the matter, the plaintiff adduced viva voce evidence. He also tendered evidence of the copy of the charge sheet from the Mthatha Magistrates' Court, among other evidence. His testimony may conveniently be summarized as follows: around midnight on 20 July 2021 the police arrived at his home, knocked at his door and kicked it open before he could open it for them. Having stormed his house, they demanded a firearm. When he told them that he had no firearm, they began assaulting him and they

searched his house and found no firearm. In the presence and full view of his wife and children they handcuffed him, covered his head with plastic, and before they tied the plastic, they applied pepper spray underneath it so that he would suffocate from its fumes. When he persisted with his denial of possession of a firearm, the police continued assaulting him. He explained to them that a firearm which belonged to his deceased brother was in the custody of his uncle. He pointed out his uncle's home which was some 4 houses away from his home.

[9] The police took him to his uncle's homestead. There, he told his uncle of the presence of the police and that they were looking for the late Olwethu Noholoza's firearm. The plaintiff further testified that to his knowledge, the firearm was licenced. His uncle opened the door and handed the firearm over to the police. After that, he and his uncle were arrested and taken to detention at the Mthatha Central Police station. When he appeared in court on 22 July 2021, his case was postponed to 27 July of the same year at the instance of the police. The magistrate before whom he appeared explained to him that the police had requested time to conduct further investigation of the firearm which they were seized from his uncle.

[10] Subsequent to the postponement of his case on 22 July 2021, he remained in custody at Wellington Prison, Mthatha, and he was brought to court again on 27 July 2021. When he appeared in court on this latter occasion, charges against him were withdrawn. The outcome of the case as recorded on the face of copy of the charge sheet that was admitted in evidence is that "*charges were provisionally withdrawn pending finalization of investigation*". The plaintiff further testified that at the time of the hearing of this case, he had never been called upon to attend the case again after the withdrawal of the charges on 27 July 2021. This concluded the plaintiff's case.

Submissions on behalf of the plaintiff

[11] Mr *Msindo* submitted that the plaintiff's particulars of claim and his evidence establish, on a balance of probabilities, that, he was arrested and detained for six days at the instance of the police. He went on to submit that that is all that the plaintiff needed to prove. The onus, he said, rested on the police to justify the arrest and detention, and since no such justification came forth, judgment must be entered in favour of the plaintiff.

[12] Regarding the quantum of damages, Mr *Msindo* submitted that the amount claimed is fair compensation for the harm suffered by the plaintiff. He highlighted the police conduct when they went to the plaintiff's home as aggravating and warranting censure by this Court. It was Mr *Msindo*'s submission further, that, this Court may have recourse to previous awards as a guide to what will constitute a fair award of damages.

The legal principles

[13] The plaintiff's claim is one under *actio iniuriarum*. There are no facts placed on record by the defendant in defence of the claim. Generally, in order to succeed in an action under *actio iniuriarum*, the plaintiff must establish that (a) his liberty has been interfered with; (b) the interference occurred intentionally (c) the deprivation of liberty was wrongful, and (d) that the conduct of the defendant caused, both legally and factually, the harm for which compensation is sought.¹

[14] In the context of a claim founded on unlawful arrest and detention, the legal position as articulated in *Zealand*² is that because the Constitution enshrines the right to freedom and security of the person, including the right not

¹ *De Klerk v Minister of Police* 2020 (1) SACR (CC) (*De Klerk*), para 14.

² *Zealand v Minister for Justice and Constitutional Development and Another* (CCT54/07) [2008] ZACC 3; 2008 (6) BCLR 601 (CC); 2008 (2) SACR 1 (CC); 2008 (4) SA 458 (CC) (11 March 2008) (*Zealand*).

to be deprived of freedom arbitrarily or without just cause, as well as the founding value of freedom, it is sufficient for the aggrieved party simply to plead that he was unlawfully detained. The defendant bears the burden to justify the deprivation of liberty, whatever form it may have taken.³

[15] It is as well to restate the trite principle of the law, that, a person may only be arrested and detained without a warrant authorizing his arrest in circumscribed circumstances, which the CPA sets out in section 40(1). For the arresting officer to successfully rely on section 40(1)(a) as justification for an arrest without a warrant she must prove, on a balance of probabilities, that she had personal knowledge of the conduct of the arrested person and the facts on which she based the arrest.⁴ The test is objective and the arresting officer's own reasonable or good faith conclusion or belief that an offence was committed is not sufficient.⁵

[16] The facts which must be established for the justification of an arrest effected in terms of section 40(1)(b) were set out by the Court in *Duncan v Minister of Law and Order*⁶, as being that: (i) the arrestor must be a peace officer; (ii) the arrestor must entertain a suspicion; (iii) the suspicion must be that the suspect (the arrestee) committed an offence referred to in Schedule 1 of the CPA; and (iv) the suspicion must rest on reasonable grounds.

[17] The test for the reasonableness of the grounds of suspicion on which the arrest is effected was laid down in *Mabona and Another v Minister of Law and Order and Others*,⁷ where the court held:

‘[T]he reasonable man will therefore analyse and assess the quality of the information at his disposal critically and he will not accept it lightly or without checking it where it can be

³ Id, para 24; see also, *Minister of Law and Order and Others v Hurley and Another* 1986 (3) SA 568 (A) at 589.

⁴ *Scheepers v Minister of Safety and Security* 2015 (1) SACR 284 (ECG) par 17.

⁵ Id, para 18 and 20.

⁶ 1986 (2) SA 805 (A) at 818G-H.

⁷ *Mabona and Another v Minister of Law and Order and Others* 1988 (2) SA 654 (SE) at 658G-H.

checked. It is only after an examination of this kind that he will allow himself to entertain a suspicion which will justify an arrest. This is not to say that the information at his disposal must be of sufficiently high quality and cogency to engender in him a conviction that the suspect is in fact guilty. The section requires suspicion not certainty. However, the suspicion must be based upon solid grounds. Otherwise, it will be flighty or arbitrary, and not a reasonable suspicion.’

[18] The offence of possession of a firearm, created by section 3 of the Firearms Control Act 60 of 2000 (the Act),⁸ indeed falls under schedule 1 by reason of the fact that it is punishable with a period exceeding 6 months without an option of a fine. This much is evident from the provisions of section 121 of the Act.⁹

[19] The decision to arrest entails the exercise of a discretion. Once the jurisdictional facts for an arrest, whether without a warrant as envisaged in any paragraph of section 40(1) or with a warrant in terms of s 43 of the CPA, are present, a discretion arises, and the peace officer is not obliged to arrest.¹⁰ That discretion must be exercised after taking all the prevailing circumstances into consideration.¹¹

Discussion

[20] This being an undefended action, the plaintiff’s version stood uncontroverted. Notwithstanding this fact, I must still be satisfied, on a balance of probabilities, that he was successful in proving his claim.

⁸ Section 3 of the Act provides that: “No person may possess a firearm unless he or she holds a licence, permit or authorisation issued in terms of this Act for that firearm.”

⁹ Schedule 4 of the Act, read with section 121, stipulates a maximum of 15 years imprisonment upon conviction for contravening section 3. The same schedule stipulates 15 years imprisonment for a conviction of unlawful possession of ammunition in contravention of section 90 of the same Act.

¹⁰ *Minister of Safety and Security v Sekhotho* 2011 (1) SACR 315 (SCA), para 28 (*Sekhotho*).

¹¹ *Biyela v Minister of Police* (1017/2020) [2022] ZASCA 36; 2023 (1) SACR 235 (SCA) (1 April 2022), para 36 (*Biyela*).

[21] On the plaintiff's uncontroverted version, after the police searched his house in vain for the firearm, he went as far as telling them where it was kept, which place was not far from his home. It bears emphasizing that the police took the plaintiff under their control by handcuffing him and going with him to his uncle's home, they had not found any firearm in his possession. Their investigation at the plaintiff's house had effectively ended. This notwithstanding, they placed him under arrest at that point – his liberty was accordingly restrained. To compound the situation, the plaintiff's exculpatory statement that he proffered while the police searched his home was indubitably confirmed as true when his uncle later handed them the firearm. Despite this, the police still saw a need to arrest the plaintiff. It is difficult to comprehend what the basis of the plaintiff's arrest was in those circumstances. An inexorable conclusion is that his arrest had no legal basis – it was therefore unlawful. It ought to follow that the plaintiff's subsequent detention at the Mthatha Central Police Station until his first appearance in court on 22 July 2021 was unlawful.

[22] No automatic liability arises against the defendant for a person's continued detention after appearance in court. For it is so, that, the authority of the police to detain the suspect after arrest endures until his first appearance in court, whereafter his further detention is dependent on the decision made by the court in the exercise of its discretion.¹² The police will be liable for the plaintiff's detention post court appearance if by their culpable conduct they caused the harm that resulted from the further detention.¹³

[23] In the present case, it would have been evident to the police when the plaintiff's uncle handed them firearm that they went there looking for that the plaintiff had nothing to do with it. Quite remarkably, against all this background, on the plaintiff's first appearance in court, the police sought a

¹² *Sekhoto*, footnote 10, supra, para 42; *Minister of Safety and Security v Tyokwana* [2014] ZASCA 130; 2015

(1) SACR 597 (SCA), para 38 (*Tyokwana*).

¹³ *De Klerk* footnote 1, supra, para 63.

postponement for further investigation to be carried out on the same firearm that was not found in the plaintiff's possession but someone else's. This postponement caused his further detention until 27 July 2021. There is no indication from the plaintiff's version, that his uncle had been keeping the firearm on his behalf. From these facts, a finding must follow that the wrongful conduct of the police in seeking the postponement of the plaintiff's case in circumstances where it was manifest that he committed no offence is closely connected to his further detention following the grant of the postponement by the magistrate. The defendant must therefore be held liable for the plaintiff's detention until his release on 27 July 2021.

The quantum of damages

[24] The Constitution places much store by the person's liberty and dignity. The unlawful deprivation of a person's liberty is, in itself, a serious injury which constitutes an impermissible infringement of his/her constitutional rights to freedom and security of the person, and to human dignity.¹⁴

[25] It is by now trite that damages are awarded to deter and prevent future infringements of fundamental rights by organs of state.¹⁵ They are a gesture of goodwill to the aggrieved and they do not rectify the wrong that took place.¹⁶ A claim for damages is not a means to enrich the aggrieved party.¹⁷ This being an unliquidated claim for damages, the court has no mechanical way of determining with precision what a fair amount of compensation would be in a

¹⁴ *Motladile v Minister of Police* (414/2022) [2023] ZASCA 94 (12 June 2023) para 22 (*Motladile*)

¹⁵ *Mahlangu and Another v Minister of Police* (CCT 88/20) [2021] ZACC 10; 2021 (7) BCLR 698 (CC); 2021 (2) SACR 595 (CC) (14 May 2021).

¹⁶ *Ibid* para 50.

¹⁷ *Spannenberg and Another v Minister of Police*¹⁷ (2993/2019) [2022] ZANWHC 4 (24 February 2022) para 20.

given case. Regard must be had to a number of indeterminable and incommensurable factors, presented by way of evidence.¹⁸

[26] Apart from the duration of the detention, other factors to be considered by the court in assessing the plaintiff's damages, include: the circumstances under which the arrest and detention occurred; the presence or absence of improper motive or malice on the part of the defendant; the conduct of the defendant; the nature of the deprivation; the status and standing of the plaintiff; the presence or absence of an apology or satisfactory explanation of the events by the defendant; awards in comparable cases; publicity given to the arrest; the simultaneous invasion of other personality and constitutional rights; and the contributory action or inaction of the plaintiff.¹⁹

[27] The plaintiff's evidence regarding conditions of his detention was that at Mthatha Central Police Station, he was detained with his uncle in unsanitary conditions. The cell and the blankets with which they slept were dirty. The toilet that was inside the cell was not functioning as there was no water to flush it. The food he was served with was poorly prepared. He was caused to sleep on the cement floor. At Wellington Prison, the conditions of his detention were almost similar, save for the fact that in the latter place of detention, there were steel beds, but the mattresses were thin, it was as if he slept on the floor. The windowpanes were broken, and it felt as though he was sleeping outside.

[28] Upon questions from the court for the purposes of elucidating some of the facts in regard to which he testified, the plaintiff further stated that at the time of his arrest and detention, he did odd jobs at construction companies, and his highest level of education was Standard 5 (Grade 7). At Wellington Prison, he

¹⁸ *EFF and Others v Manuel* (711/2019) [2020] ZASCA 172 (17 December 2020), paras 93 and 96; *See also Minister of Police v Mzingeli and Others* (115/2021) [2022] ZASCA 42 (5 April 2022), *Rahim v The Minister of Home Affairs*, (965/2013) [2015] ZASCA 92; 2015 (4) SA 433 (SCA); [2015] 3 All SA 425 (SCA) (29 May 2015), para 27 (*Rahim*).

¹⁹ *Motladile*, footnote 14, *supra*, para 17.

was detained with approximately fifty other persons who were not known to him. He went on to testify that his arrest and detention hurt his feelings, and he became stigmatized in his community as ‘a mischievous person.’ This was his first encounter with the law. He had never been arrested before. The police never tendered any apology to him.

[29] While it is always helpful to have regard to previous awards, they are not meant to be a benchmark of the quantum of damages to be awarded in a given case, otherwise, the court’s discretion in determining an appropriate award of damages would be impermissibly fettered. Each case must be decided on its own peculiar facts and circumstances.²⁰ Afterall, no two cases are identical.

[30] The plaintiff was detained in the above-mentioned circumstances for a period of six days. In *Minister of Police v Mjali and Others*,²¹ an award of R200 000.00 for arrest and detention for a period of two days, was reduced on appeal, to R100 000.00. In *Madyibi v Minister of Police*,²² the plaintiff was awarded R40 000.00 in damages for unlawful arrest and overnight detention. In *Mhlanza v Minister of Police*,²³ the plaintiff was awarded R75 000.00 for detention overnight (from 13h00 on the day of arrest until the morning of the next day after appearance in court). The Court, in *Peterson v Minister of Safety and Security*,²⁴ awarded R60 000.00 for unlawful arrest and detention for one night.

²⁰ *Spannengurg v Minister of Police*, footnote 5 supra.

²¹ *Minister of Police v Mjali and Others* (CA 91/2022) [2023] ZAECMHC 62 (7 November 2023).

²² *Madyibi v Minister of Police* 2020 (2) SACR 243 (ECM).

²³ *Mahlanza v Minister of Police* (EL1326/2017) [2019] ZAECELLC 32 (26 November 2019).

²⁴ *Peterson v Minister of Safety and Security* [2009] ZAECGHC.

[31] In this case, the police arrested and detained the plaintiff even though their own investigations revealed that he committed no offence. Not only that, but they applied for a postponement of the case when fully aware that there was no evidence linking the plaintiff to the commission of any offence. Most disconcertingly, the police dehumanized the plaintiff in the full view of his wife and children. All of these factors must weigh heavily against the defendant. This kind of conduct is barbaric and should not be countenanced. South Africa is a Constitutional state where persons enjoy certain rights and freedoms. Police conduct in the exercise of their constitutional obligations in securing the inhabitants of the Republic, and upholding and enforcing the law, must have regard to the protections afforded to human rights in the Bill of Rights.

[32] In conclusion, I accept that the plaintiff's arrest and detention took place in 2021. Even though it has been more than 4 years since, in determining the appropriate award of damages I am enjoined to have regard to the depreciating value of money due to the effects inflation. It is a trite principle of the law that the Court's evaluation of an appropriate award must take into account the current day value of the currency and not its value at the earlier time. For the purposes of the instant case an award that I consider appropriate must be in terms of the value of currency in 2026 being the time of assessment of the plaintiff's damages.

Costs

[33] The general rule is that costs must follow the result. There are no exceptional circumstances in the present case that would call for a departure from this rule. The amount claimed by the plaintiff in his particulars of claim is R800 000.00. This amount falls beyond the jurisdiction of the Magistrate's Court which, at the time the plaintiff instituted his claim. In terms of the

Magistrate's Court Act 32 of 1944,²⁵ the jurisdiction of the Magistrates' Court at the time this action was instituted, was a maximum of R200 000.00 for the ordinary Magistrates' Court and a maximum of R400 000.00 for the Regional Court. As the Supreme Court of Appeal held in *Vorster v Clothing City (Pty) Ltd*,²⁶ the sole test in determining whether a claim or a matter in dispute falls within the jurisdiction of the Magistrates' Court, is the amount claimed.²⁷ There is, in the present case, no reason why the plaintiff's costs should be awarded on a scale lower than that applicable in the High Court.

[34] With that said, this case is not unusually complex both on the facts and the law. Scale A referred to in Uniform Rule 67A is an appropriate scale on which costs must be recovered by the plaintiff.

[35] For all the foregoing reasons, the following order shall issue:

1. The defendant is held liable for the damages suffered by the plaintiff resulting from his unlawful arrest on 22 July 2021, and subsequent detention at the Mthatha Central Police station and Wellington Prison, respectively, until 27 July 2021.
2. The defendant shall pay to the plaintiff, within 30 days from the date of this judgment, an amount of R450 000.00 for the damages he suffered resulting from his unlawful arrest on 22 July 2021 and his subsequent detention until 27 July 2021.
3. This award shall attract interest at the prescribed legal rate per annum, calculated from the date of judgment to date of payment.

²⁵ In terms of s 29(1)(g) read with s 29(1A) of the Magistrates' Court Act 32 of 1944, the Minister is empowered to determine the monetary jurisdiction in respect of district and regional courts. The Minister has since determined the minimum and the maximum monetary jurisdiction of the Magistrates' Court as a maximum of R 200 000 for district courts and above R 20 000 up to R 400 000 for regional courts by Government Notice GG37477/27-3-2014.

²⁶ *Vorster v Clothing City (Pty) Ltd* (159/2023) [2024] ZASCA 53; 2025 (2) SA 156 (SCA) (19 April 2024).

²⁷ *Ibid*, para 11.

4. The defendant shall pay the plaintiff's costs on scale A referred to in Uniform Rule 67A.

L RUSI
JUDGE OF THE HIGH COURT

Appearances:

Attorney for the Plaintiff : VV Msindo
VV Msindo & Associates, Mthatha

Heard: 03 December 2025

Delivered: 27 January 2026